

BEFORE THE STATE OF MONTANA

SUPERINTENDENT OF PUBLIC INSTRUCTION

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RALPH FOLLINGLO	)	
Petitioner,	)	
v.	)	<u>DECISION AND ORDER</u>
THE BOARD OF TRUSTEES OF CASCADE	)	
COUNTY SCHOOL DISTRICT #1 and A	)	OSPI 16-82
Respondent.	)	

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This is an appeal by a tenured teacher, Ralph E. Follinglo, of a reduction in force decision (hereinafter referred to as RIF) made by the Cascade County Superintendent of Schools rendered December 19, 1981.

That decision combined the appeals of Ralph Follinglo and Howard Hahn. However, only the decision affecting Mr. Follinglo has been appealed.

At the outset, I believe it is essential to note that the RIF actions of the respondent school district affected many teachers initially. Fortunately, other circumstances allowed many of the teachers to be rehired and only three teachers appealed the county superintendent's orders with respect to them, to me. Since the time of the submission of these appeals, two of the three have become moot because of parallel and decisive actions taken with regard to the teacher's contract rights. I think both the school district and the teachers of Cascade County as well as the county superintendent, have done an excellent job in managing this complex and difficult area of reducing staff in the face of decreasing enrollments.

While Mr. Follinglo is the sole appellant before me, it is necessary and I believe it was necessary for the county superintendent, to consider all teachers within the appellant's group together in order to determine whether or not the RIF was properly applied. In considering the group, I must look to the three teachers in the social studies area, two of whom would have to have been reduced to meet the original RIF needs. The social studies department needed to reduce six FTE's. That was done as follows: D. L. equals 0.4, M. C. equals 1.0, C. F. equals .6, C. B. equals 1.0, A. H. equals 1.0, \*R. F. equals 1.0, and \*H. H. equals 1.0.



Mr. Owen, another full-time equivalency, was not reduced. He was a non-tenured teacher, and even if he had been reduced, it was argued to the county superintendent and respondent here, that R. F. (Ralph Follinglo) would have had to have been reduced. (See transcript PP 676, 677)

Mr. Follinglo was evaluated by the district according to the RIF criteria and according to that evaluation would have been reduced whether or not Mr. Owen (untenured) would have been reduced. (TR. P 677) Mr. Hahn (tenured) was involved in two extracurricular activities whereas Mr. Follinglo was only involved in one. (TR. P677) The county superintendent properly ruled that only ~~one~~ of the tenured teachers could have been RIF'd.

As we mentioned earlier, both Hahn and Follinglo appealed the school district determinations to the county superintendent whose order requiring the district to choose between Hahn and Follinglo was appealed by Follinglo only, to the state superintendent.

Issue on Appeal:

While both parties in effect are arguing about the remedy imposed by the county superintendent in Mr. Follinglo's case, there are several subissues that arise from this appeal, namely:

- a. Whether or not a county superintendent in RIF cases can consider more than one appeal together in rendering a decision.
- b. Whether a decision of the county superintendent involving a RIF case can combine or resolve appeals by more than one teacher.
- c. Whether or not the county superintendent can remand a RIF decision to the board of trustees for the application or re-application of RIF guidelines.

Early in my consideration of RIF cases, I have stressed and emphasized the importance of dealing with "grouping or dealing with teachers in their subject areas." I have also emphasized the priority that should be given to tenured teachers over non-tenured teachers. See James C. Holter vs. Valley County School District 1/13, Decision and Order of the State Superintendent, December 30, 1981. Eased on these considerations, I think it is not only necessary but in most cases, required, that the county superintendent consider the appeals

of all teachers within one subject area together. Of course, there may be different issues arising out of those appeals that must be handled individually but in matters dealing purely with the application of the RIF criteria, it is proper for the county superintendent as was done in this case, to combine the appeals affecting more than one teacher in a subject area. Of course, this does not limit the rights of the individual teachers to appeal or accept those decisions. In other words, as in this case, one of the teachers may choose to appeal and the other may choose to accept the decision of the county superintendent.

From those threshold determinations, and in applying the standard of review set forth in 2-4-704 MCA, I must reverse the decision of the county superintendent in part, because in this case, there was ample evidence in the record before the county superintendent upon which to render a decision.

Remanding a RIF case back to the board of trustees for a final determination based on their criteria, which have been upheld by the county superintendent or appealed by the teacher, appears to be giving the board of trustees an additional power to terminate, which is not provided for by statute.

In this case, the petitioner was properly notified by the school district as required by statute, and there has been no appeal to me that the other statutory reasons for termination were not followed initially by the school district.

What is argued by the appellant, is the total absence from the statutes of authority for the county superintendent to fashion the additional remedy suggested in this case.

Appellant's attorney has cited the case of Wyatt vs. School District 11104, Fergus County, 148 Mont., 83, 417 P2d 221 (1966) in support of their arguments. That case appears to be applicable insofar as it does limit the basis for determination of teachers.

Because the county superintendent upheld the criteria applied by the Cascade District in these RIF cases and because there was ample evidence and record before the county superintendent to determine based on that criteria, which teachers would have been retained and which teachers would have been terminated, by applying it to the specific case in question, there was ample evidence for the county

superintendent to rule. Unfortunately, that was not done and that was in error.

The appellant has carefully tried to update us on the progress of the teachers involved, since the hearings before the board of trustees. Indeed, much has changed, but I believe it is essential to remain confined to the RIF record on appeal, to determine which teachers should have been RIF'd and which teachers should have been retained. Indeed, the school district has the power and control to rehire any RIF' teacher as conditions require and indeed, the affidavits attached to the appellant's briefs seem to indicate that has happened. Conditions will change after a RIF and I do not want to limit the flexibility of boards to rehire teachers by basing this decision on what happened after the hearing before the county superintendent of schools.

Admittedly, it is easier for the county superintendent to refer the matter back to the school board, the party who initially instigated the RIF, to make the final determination, but when we have here a complete record from which to make a decision, it is for the county superintendent or for me, to make that uncomfortable decision. Because of the evidence submitted at the county superintendent's hearing, and because there is no dispute as to the guidelines applied by the board of trustees, the determination of Ralph Follinglo, pursuant to RIF by the board of trustees must be upheld and the decision of the county superintendent of schools is reversed insofar as it grants the board the option to terminate one of two tenured teachers.

If this ruling were allowed to stand, the board could use any other criteria for this determination and there is the possibility of a confused and even more complicated appeal process for the teacher involved.

For instance, would the teacher now be able to request a hearing before the board of trustees which would also be appealable to the county superintendent based on the remand decision of the county superintendent. School law is complex enough without further complicating the rights of termination and I believe this is the policy adopted by our Supreme Court in the Wyatt case above and surely Yanzick does not sanction increased complexity for school law appeals.

Therefore, the decision of the county superintendent of schools is reversed insofar as it permits the school district to choose between the appellant and another tenured teacher and the decision of the board of trustees is affirmed insofar as the appellant was terminated pursuant to RIF procedure.

DATED September, 10, 1982.